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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,719	12/21/2000	Daniel J. Thompson	43517/203984	7753
826	7590	04/27/2005		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER MEINECKE DIAZ, SUSANNA M	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,719

Applicant(s)

THOMPSON, DANIEL J.

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 37-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Non-Final Office action is responsive to Applicant's election filed May 11, 2004.

Applicant has elected Group I (claims 1-36) without traverse. Claims 37-75 stand as non-elected claims and are therefore withdrawn from consideration.

Claims 1-36 are presented for examination.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it is too long. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

While claims 1-12 produce the useful, concrete, and tangible result of analyzing a workload schedule, the recited steps could be performed entirely by hand and do not necessarily apply, involve, use, or advance the technological arts. Therefore, claims 1-12 are deemed to be non-statutory.

As discussed in the rejection under § 112, 2nd paragraph below, it is not clear whether Applicant intends to recite a computer program product (i.e., article of manufacture) or apparatus in claims 13-24. 35 U.S.C. § 101 requires that each claim be limited to one statutory class; therefore, a rejection under § 101 is asserted for claims 13-24 until such clarification is adequately made.

Claims 25-36 recite a computer program software product; however, it is not clear that the computer program is statically stored in a computer readable medium. Therefore, claims 25-36 effectively recite software *per se*, which is non-statutory subject matter.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation “the tasks” in line 6. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, “the tasks” will be interpreted as “the at least one task.”

Claim 13 recites a system comprising a computer device comprising various “portions,” which are interpreted as software modules. First, it is unclear how a computer device can comprise software modules *per se* since a device claimed as part of a system implies that there is structure present. Does Applicant intend to recite that the computer device executes the recited portions? Second, a system typically comprises at least two structural elements. At present, claim 13 only recites one

structural element (i.e., the computer device). Does Applicant intend to recite a computer program product (i.e., article of manufacture) or apparatus in claims 13-24?

Claim 13 recites the limitation "the tasks" in line 8. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, "the tasks" will be interpreted as "the at least one task."

Claim 25 recites the limitation "the tasks" in line 9. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, "the tasks" will be interpreted as "the at least one task."

Claims 25-36 recite a computer program software product; however, it is not clear that the computer program is statically stored in a computer readable medium. Therefore, claims 25-36 effectively recite software *per se*.

Appropriate correction is required.

Allowable Subject Matter

8. Claims 1-36 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 101 and 112, 2nd paragraph, set forth in this Office action.

9. The following is a statement of reasons for the indication of allowable subject matter:

The closest prior art of record is Yuri et al. (U.S. Patent No. 6,249,715). Yuri discloses a method for optimizing work distribution by taking into account the range of time required for skilled versus non-skilled workers to perform various tasks. A

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predicted operation time for each worker is determined based on a normal operation time per worker. Work is then balanced so as not to exceed a predetermined allowance of time required to perform the tasks. However, Yuri fails to disclose or suggest the details of performing the work distribution optimization in relation to a plurality of projects, each project having a start date and a cycle time, arranging the projects according to start date and cycle time such that each task is at least partially performed in one of the intervals, determining a total effort equivalence for each interval corresponding to the sum of the effort equivalence apportionment for the tasks at least partially performed in that interval, comparing the total effort equivalence for each interval to a historical maximum effort equivalence volume, and modifying the projects based on this comparison. This combination of limitations is recited in claims 1-36; therefore, claims 1-36 are deemed to be allowable over the prior art of record.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fields et al. (U.S. Patent No. 5,111,391) -- Discloses a system and method for making staff schedules as a function of available resources as well as employee skill level, availability, and priority.

Morgan et al. (U.S. Patent No. 5,799,286) -- Discloses a system for evaluating activity-based job costs.

Sanders et al. (U.S. Patent No. 6,574,605) -- Manages workload based on a predicted full time equivalent measure and historical data.

Deziel, Jr. et al. (U.S. Patent No. 5,406,476) -- Scheduling development projects using the critical path method and full time equivalent availability data.

Crockett (U.S. Patent No. 5,325,292) -- Takes into account predicted call volumes in order to schedule call center agents.

Toole (EP 0 603 513) -- Performs employee productivity comparisons based on the normalization of factors, such as page and task complexity when processing documents.

Krieg et al. ("Integrating Technology to Increase Application Development Productivity") -- Discloses project scheduling based on full time equivalent measures.

Duncan et al. ("A New Servicing Cost Study") -- Discusses the effect of outsourcing on cost and productivity measures.

Anton et al. ("Best Practices for Customer Service Call Centers -- An Exclusive Statistical Study") -- Takes into account factors such as average call handling time and full-time equivalent operators in a call center in order to schedule the operators.

Casteuble ("How Associations are Taking to Technology") -- Discusses staffing issues related to decisions regarding outsourcing.

Hall et al. ("Optimize Your Call Center Through Simulation") -- Discusses a decision-making process of outsourcing call center functions.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 10 am - 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Susanna M. Diaz
Primary Examiner
Art Unit 3623

April 21, 2005